

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 2 of 1997

in

SPECIAL CIVIL APPLICATION No 7705 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

WORKMEN EMPLOYEED BY GUJARAT HOUSING BOARD

Appearance:

MRS KETTY A MEHTA for Petitioner
MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 26/08/97

ORAL JUDGEMENT (Per:Pandit.J)

Admitted. Mr. A.L.Clerk learned counsel for the respondent waives service of notice of admission. We have heard Ms. Mehta for the appellant and Mr. Clerk for the respondent. In view of the nature of the proceedings we are finally disposing of this appeal. Present appeal is preferred against the order of interim relief passed by the learned single Judge in SCA No. 7705 of 1996 on 3.12.96, which runs as under:

"Notice returnable on 20th December 1996 on the condition that the petitioner shall deposit an amount of Rs. 5,000/- (Rupees Five thousand) towards expenditure irrespective of the result of the petition within a period of two weeks. In the meantime office shall issue notice. Notice as to interim relief. By way of ad-interim relief, order, if any passed by the executing Court in the execution proceedings which is pending, as contended by Mrs. Mehta, learned counsel for the petitioner will be stayed till 20th December 1996"

If the above order of the learned single Judge is considered then it would be quite clear that the learned Judge had not given any reasons as to why he is directing the appellant original petitioner to deposit an amount of Rs. 5,000/- by way of expenditure. The learned single Judge has not also stated in his order as to why he is inclined to pass such an order. The petition is filed challenging the award passed by the Industrial Tribunal, Rajkot. The learned single Judge was also pleased to issue show cause notice before admission. Therefore, in the circumstances, it was necessary for the learned single Judge to indicate as to why he was directing the appellant original petitioner to deposit Rs. 5000/- by way of expenses. But we are aware that the award is passed by the Industrial Tribunal in favour of the workmen who were initially appointed as daily rated workers and who were seeking certain benefits of regularisation. The learned Single Judge has also partly granted the interim reliefs sought by the original petitioner-respondent before us. It seems that the fact viz. there was an order in favour of the workers who were daily rated workers which has induced the learned single Judge to ask the petitioner to deposit an amount of Rs. 5000/- in the court towards the expenses of the respondent.

2. The learned single Judge has further directed that the amount is to be deposited irrespective of the result of the petition. In our opinion this part of the

order is not correct and deserves to be interfered with because at this stage it is not possible to hold that the contention raised by the petitioner-appellant before us could not be entertained. Such an order unnecessarily causes an apprehension in the mind of the litigant that the court has got prejudice against the party against whom such an order is passed. The deposit of the amount should be subject to the final decision in the matter and not irrespective of the result of the petition. We are also aware of the circumstances that in a given case even if the matter might be ultimately allowed on merits, the appellant original petitioner could be directed to pay costs or expenses to the other side. But such an action to take place only at the time of final decision and not at the initial stage of admission. As a matter of fact in the instant case, the matter is yet to be admitted and at the stage of notice such an order is not at all justified. We therefore, partly allow this appeal and we direct that the words "irrespective of the result of the petition" appearing in the order interim relief passed by the learned single Judge on 3.12.96 be deleted and in its place the words "subject to the final order in the petition" be inserted. We also further direct the office that the amount of Rs. 5000/- deposited by the appellant original petitioner in the name of the Registrar of this Court be deposited in the FDR for a period six months and to renew the same automatically till final decision of the petition. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)